No. 17-647

IN THE

Supreme Court of the United States

ROSE MARY KNICK,

Petitioner,

v.

TOWNSHIP OF SCOTT, PENNSYLVANIA, ET AL.,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

Congress created a cause of action in 42 U.S.C. § 1983 to redress "the deprivation" under color of state law "of any rights, privileges, or immunities secured by the Constitution." In *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985), this Court adhered to longstanding precedent and rejected a property owner's Section 1983 claim because the owner had not been deprived of its constitutional right to recover "just compensation" for "private property * * * taken for public use." U.S. Const. Amend. V.

The question presented is whether to overrule *Williamson County* and reinterpret Section 1983 to provide a cause of action to a person alleging a deprivation of private property, but not a deprivation of the constitutional right to recover just compensation for that property.

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PROVISIONS INVOLVED

Pertinent provisions of the Fifth and Fourteenth Amendments to the U.S. Constitution, 42 U.S.C. § 1983, 26 Pa. Cons. Stat. (Pa. C.S.) §§ 102, 302 and 502, and 9 Pa. C.S. §§ 702 and 703 are reproduced at Appendix 1a–7a, *infra*. The Ordinance of the Township of Scott, Pennsylvania, Relating to the Operation and Maintenance of Cemeteries and Burial Places is reproduced at J.A. 20–24.

INTRODUCTION

This Court granted review to reconsider *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985). *Williamson County* held that, if a person whose property is taken for public use retains the right to recover just compensation for the taking by way of an inverse-condemnation proceeding in state court, she cannot press a claim under 42 U.S.C. § 1983 that is premised on a violation of the Just Compensation Clause. That holding is sound and should be reaffirmed.

Petitioner challenges remarkably little of *Williamson County*'s reasoning. She accepts that the Just Compensation Clause does not require that compensation be paid in advance of or contemporaneously with a taking. And, outside of a pair of footnotes buried in her brief—not nearly enough to sustain an attack on precedent—petitioner accepts that an inverse-condemnation remedy in state court is a constitutionally sufficient means to provide just compensation. She further concedes that such a remedy was available to her in this case, and that she did not pursue it. In short, petitioner does not and could not argue that her constitutional right to recover compensation was violated.

The only question remaining for this Court to decide is whether petitioner must allege a violation of that right in

order to proceed under Section 1983, the sole cause of action that she pleaded. The correct answer follows from the plain text of that statute, which provides a remedy only for "deprivation[s]" of "rights, privileges, or immunities secured by the Constitution." 42 U.S.C. § 1983. A long and unbroken line of this Court's precedent limits the Section 1983 cause of action to persons alleging violations of federal rights, and there is no good reason to depart from that construction—and powerful reasons to adhere to it.

This Court's decision in *Williamson County* did not single out property rights for disfavored status. It simply applied the general Section 1983 rule to the Just Compensation Clause right. There can be no violation of that right—and thus no claim under Section 1983—if a reasonable, certain, and adequate postdeprivation remedy exists in state court. If such a remedy is available to her, a plaintiff cannot manufacture a constitutional violation by refusing to pursue that remedy. That is exactly what petitioner tried to do in this case, and the courts below properly rejected her Section 1983 claim. This Court should affirm.

STATEMENT

A. Legal Background

1. This case concerns the interplay of the Fifth and Fourteenth Amendments with Section 1983. The Fifth Amendment's Just Compensation Clause bars the federal government from taking private property for public use without just compensation. The Fourteenth Amendment applies that same prohibition to state action. And Section 1983 supplies a remedy for unconstitutional action under color of state law.

a. The Fifth Amendment does not categorically prohibit the government from depriving a person of property,

but it gives the owner two rights in relation to such a deprivation. The Due Process Clause confers the right to contest the lawfulness of the deprivation, while the Just Compensation Clause confers the right to recover compensation for a lawful deprivation of property for public use.

The Due Process Clause of the Fifth Amendment provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V. That Clause protects persons not from the deprivation, but from the "*erroneous*[]" deprivation, of property. *Hamdi v. Rumsfeld*, 542 U.S. 507, 530 (2004). Due process entitles a person who disputes the "underlying validity" of the government action depriving her of property to have its lawfulness probed by a neutral adjudicator. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 543 (2005). The property owner may argue in such a proceeding that the deprivation was unlawful on any number of grounds—including that the government did not put the property to public use. *E.g.*, *Kelo v. City of New London*, 545 U.S. 469 (2005).

The inquiry guaranteed by the Due Process Clause "is logically prior to and distinct from the question whether [a deprivation of property] effects a *taking*" compensable under the Just Compensation Clause. *Lingle*, 544 U.S. at 543 (emphasis added). Because "[n]o amount of compensation can authorize" an "impermissible" deprivation of property, a claim for just compensation "presupposes" that the deprivation is justified. *Ibid.* The Just Compensation Clause accordingly does not secure a right to private property simpliciter, but rather a "'right to recover just compensation'" for an "otherwise proper interference amounting to a taking." *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 315

(1987) (*First English*) (quoting *Jacobs v. United States*, 290 U.S. 13, 16 (1933)).

This basic understanding of the Just Compensation Clause—that it concerns *lawful* property deprivations—underlies "the entire doctrine of inverse condemnation," *First English*, 482 U.S. at 316, whereby the government takes private property for public use, with just compensation to be awarded later in a judicial proceeding instituted by the owner. This Court has long endorsed inverse-condemnation proceedings as "reasonable, certain, and adequate provision[s] for obtaining [the] compensation" that the Fifth Amendment requires for lawful deprivations of property. *Preseault v. Interstate Commerce Comm'n*, 494 U.S. 1, 11 (1990) (quoting *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641, 659 (1890)). See also *Reg'l Rail Reorganization Cases*, 419 U.S. 102, 124–25 (1974); *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 697 n.18 (1949); *Hurley v. Kincaid*, 285 U.S. 95, 104 (1932); *Crozier v. Krupp*, 224 U.S. 290, 306–07 (1912).

b. For nearly a century, courts played a limited role in administration of the Just Compensation Clause. Congress had not waived federal sovereign immunity to suits for compensation, and the Clause, like other provisions of the Bill of Rights, did not apply to the States. See *Barron v. City of Baltimore*, 32 U.S. (7 Pet.) 243, 250–51 (1833).

Congress initially paid just compensation by private bill, but that model proved unworkable. See Floyd D. Shimomura, *The History of Claims Against the United States: The Evolution From a Legislative Toward a Judicial Model of Payment*, 45 La. L. Rev. 625, 637–51 (1985). In 1855, the Court of Claims was created "for the triple purpose of relieving Congress, and of protecting the government by regular investigation, and of benefiting

the claimants by affording them a certain mode of examining and adjudicating upon their claims." *United States v. Klein*, 80 U.S. 128, 144 (1871). The new court promptly took jurisdiction over inverse-condemnation suits against the United States, *e.g.*, *Wirt v. United States*, 6 U.S. Cong. Rep. C.C. 172 (1858), but its judgments remained subject to legislative review. Then, in 1866, Congress exited the field by making judgments of the Court of Claims final and appealable to Article III courts. Act of Mar. 17, 1866, c. 19, § 1, 14 Stat. 9. Congress thereby realized the vision of James Madison, author of the Just Compensation Clause, who recognized that investigating claims against the government and ascertaining just compensation "part[ook] strongly of the judicial character" and called for "impartial[]" arbitrators whose rulings could be appealed to this Court. Annals of Cong., 1st Cong., 1st Sess. 638 (1789).

Two months after completing the switch to a judicial model for paying compensation under the Fifth Amendment, Congress submitted the Fourteenth Amendment to the States for ratification. By that time, the States had adopted just-compensation clauses in their own constitutions, and many state legislatures already were directing claims for compensation to state courts. See, *e.g.*, *Gilmer v. Lime Point*, 18 Cal. 229, 260 (1861); *City of Pittsburgh v. Scott*, 1 Pa. (1 Barr.) 309, 314–16 (1845); *Bloodgood v. Mohawk & Hudson R.R. Co.*, 18 Wend. 9, 16–17 (N.Y. Ct. Err. 1837). Cf. *Newcomb v. Smith*, 2 Pin. 131, 134 (Wis. 1849) (holding that an inverse-condemnation remedy in territorial court guaranteed the right secured by the Fifth Amendment). In short, the judicial model was established at both the federal and the state levels by the time the Fourteenth Amendment was ratified in 1868.

c. The Fourteenth Amendment incorporated the protections of the Just Compensation Clause against the States. See U.S. Const. Amend. XIV, § 1. In *Chicago, B. & Q. Railroad Co. v. City of Chicago*, 166 U.S. 226 (1897), this Court held that the Fourteenth Amendment's Due Process Clause "requires compensation to be made or adequately secured to the owner of private property taken for public use under the authority of a State." *Id.* at 235. The Fourteenth Amendment places the same condition on a State's power to take property that the Fifth Amendment places on the federal power. *Hamilton v. Ky. Distilleries & Warehouse Co.*, 251 U.S. 146, 156–57 (1919).

The Fourteenth Amendment grants Congress the "power to enforce" its terms "by appropriate legislation." U.S. Const. Amend. XIV, § 5. Congress exercised that power to pass the Enforcement Act of 1871, 17 Stat. 13, Rev. Stat. § 1979, which provides "a cause of action for violations of the Constitution" by persons acting under color of state law. *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 617 (1979). Section 1 of that statute, codified as amended at 42 U.S.C. § 1983, provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State * * * subjects * * * any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress * * *.[1]

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[1] The Enforcement Act originally protected only rights secured by the Constitution, but, in 1874, its reach was extended to rights secured by other "laws." 42 U.S.C. § 1983. See *Chapman*, 441 U.S. at

A local government is a "person" subject to liability under Section 1983, *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 690 (1978), and many States vest local governments with the power to take property for public use. If an exercise of that power is unaccompanied by a reasonable, certain, and adequate provision for compensation, Section 1983 lets the property owner pursue damages "for the unconstitutional denial of such compensation." *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 710 (1999). The federal district courts have original jurisdiction over those claims. 28 U.S.C. §§ 1331, 1343(a)(3).[2]

2. *Williamson County* addressed whether a property owner may press a Section 1983 claim if "a State provides an adequate procedure for seeking just compensation" that the owner has not followed. 473 U.S. at 195. This Court held that a Section 1983 claim does not lie in that instance because the plaintiff is not "depriv[ed] of [the] right * * * secured by" the Just Compensation Clause, 42 U.S.C. § 1983, namely, the right to a reasonable, certain, and adequate procedure to recover just compensation.

The property owner in *Williamson County* was a developer whose preliminary plats for a subdivision were disapproved by a planning commission chartered under

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608. Petitioner does not invoke any rights-creating statute, so the discussion in this brief is limited to rights secured by the Constitution.

[2] In 1875, Congress granted the lower federal courts jurisdiction over all claims "arising under the Constitution or laws of the United States," subject to an amount-in-controversy requirement. Judiciary Act, ch. 137, § 1, 18 Stat. 470 (Mar. 3, 1875), codified as amended at 28 U.S.C. § 1331. A century later, Congress eliminated that requirement, see Pub. L. No. 96-486, § 2, 94 Stat. 2369 (1980), thereby rendering superfluous the separate grant of jurisdiction over claims "[t]o redress the deprivation under color of [state law], of any right, privilege, or immunity secured by the Constitution." 28 U.S.C. § 1343(a)(3).

Tennessee law. 473 U.S. at 181. The developer "did not then seek variances that would have allowed it to develop the property according to its proposed plat," *id.* at 188, nor did it "bring an inverse condemnation action to obtain just compensation for an alleged taking" by the commission, as "allow[ed]" under state law. *Id.* at 196. Instead, the developer sued the commission in federal court "pursuant to 42 U.S.C. § 1983, alleging that the commission had taken its property without just compensation." 473 U.S. at 182.

A jury awarded the developer damages for a taking of its property. 473 U.S. at 183. The district court granted judgment to the commission notwithstanding the verdict, but the court of appeals reversed and reinstated the jury award. *Ibid.* This Court granted certiorari to consider whether "Governments must pay money damages to a landowner whose property allegedly has been 'taken' temporarily by the application of government regulations." *Id.* at 185. But "the procedural posture" of the plaintiff's Section 1983 "cause of action" kept the Court from reaching that question. *Id.* at 176, 186.

This Court ruled that the property owner's Section 1983 claim was "premature" and "not yet ripe," for two independent reasons corresponding to the two segments of the Just Compensation Clause. *Williamson County*, 473 U.S. at 194, 197. First, the Court could not discern whether property had been *taken* for public use because the plaintiff "ha[d] not yet obtained a final decision regarding the application of [state law] to its property." *Id.* at 186. Because the commission might yet have issued variances that "would allow [the plaintiff] to develop the subdivision in the manner [it] proposed," *id.* at 193, it was "impossible to determine the extent of the loss or interference" with property rights. *Id.* at 191 n.12. The Court thus

held that it could not entertain a Section 1983 claim absent the commission's "final, reviewable decision." Petitioner embraces this holding of *Williamson County*. Pet. Br. 10.

The "second reason" why the property owner could not proceed under Section 1983 was that it had not tried to obtain *just compensation* "through the procedures the State ha[d] provided for doing so." *Williamson County*, 473 U.S. at 194. This Court observed that "[t]he Fifth Amendment does not proscribe the taking of property; it proscribes taking without just compensation." *Ibid.* The Court then took note of the well-established principle that "all that is required is that a 'reasonable, certain and adequate provision for obtaining compensation' exist at the time of the taking." *Ibid.* (quoting *Reg'l Rail Reorganization Cases*, 419 U.S. at 124–25). It followed that "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause" if she has not "used the procedure and been denied just compensation." *Id.* at 195. Because a "constitutional violation" is the *sine qua non* of a Section 1983 claim, the Court held that a property owner could not "bring[] a § 1983 action" in lieu of "utiliz[ing] procedures for obtaining compensation." *Id.* at 194 n.13.

To fortify that conclusion, the Court pointed to its decisions rejecting Section 1983 claims where plaintiffs alleging violations of the Due Process Clause had not utilized constitutionally sufficient postdeprivation remedies. *Williamson County*, 473 U.S. at 195 (citing *Parratt v. Taylor*, 451 U.S. 527 (1981), and *Hudson v. Palmer*, 468 U.S. 517 (1984)). Those precedents rested on the fact that "the State's action [wa]s not 'complete' in the sense of causing a constitutional injury" remediable under Section

1983 "'unless or until the state fail[ed] to provide an adequate post-deprivation remedy for the property loss.'" *Ibid.* (quoting *Hudson*, 468 U.S. at 532 n.12). Likewise, the Court observed, if a State fulfills its constitutional duty to afford the property owner a reasonable, certain, and adequate mechanism to obtain compensation for a taking, the same completeness principle defeats a Section 1983 claim by an owner who did not invoke that mechanism. *Ibid.*

3. a. The Pennsylvania General Assembly has developed a "complete" procedure, 26 Pa. C.S. § 102(a), to provide "just compensation," *id.* § 701, to any person whose property is taken "by authority of [state] law for a public purpose." *Id.* § 103. That procedure governs claims alleging takings under either the Just Compensation Clause or its counterpart in the Pennsylvania Constitution, Art. I, § 10, which "is interpreteted using the same standards and framework" as the federal provision. *Pa. Workers' Comp. Judges Prof'l Ass'n v. Exec. Bd.*, 39 A.3d 486, 496 (Pa. Commw. Ct. 2012). Petitioner has not pressed any claim under the Pennsylvania Constitution.

A Pennsylvania property owner who alleges that a *lawful* government action has interfered with her ownership rights to the point of "taking" her property has six years to petition the county Court of Common Pleas for "the appointment of viewers to ascertain just compensation." 26 Pa. C.S. § 502(a)(6). See *id.* § 502(c)(1); 55 Pa. C.S. § 5527(a)(2). An owner who alleges that she was *unlawfully* deprived of property may invoke the equity jurisdiction of the same court "to force the [alleged taker] to file a declaration of taking which [the property owner] may then challenge through preliminary objections." *Blair Twp. Water & Sewer Auth. v. Hansen*, 802 A.2d 1284, 1289 (Pa. Commw. Ct. 2002). See 26 Pa. C.S. §§ 302, 306. If the

challenge to the lawfulness of the government action is sustained, the court may vacate that action and "revest[]" title in the private owner. 26 Pa. C.S. § 306(f)(1). Otherwise, the court "determine[s] whether a condemnation has occurred" and enters a final and appealable order on the question of liability. *Id.* § 502(c)(2); Pa. R. App. P. 311(e).

If property *was* taken, the Court of Common Pleas selects three county residents—including an attorney, 26 Pa. C.S. § 503(2)—from the Board of Viewers, "an established and experienced panel of experts" funded by the County. *Commonwealth ex rel. Kelley v. Cantrell*, 193 A. 655, 659 (Pa. 1937). See 42 Pa. C.S. §§ 2412, 3544(a)(1)(i). After those experts "view the premises, hold [public] hearings," 26 Pa. C.S. § 504(a)(1), and receive testimony from "qualified valuation experts," *id.* § 1105, they "file a report" proposing a compensatory award. *Id.* § 512. That award is incorporated into a final judgment of the court, *id.* § 518, unless the property owner objects to it, in which case she may ask the judge or a jury to recalculate just compensation *de novo* after visiting the premises and hearing from other experts. *Id.* § 1103. Every compensation award includes interest calculated from the date of the taking, *id.* § 713, as well as "reimbursement of reasonable appraisal, attorney, and engineering fees and other costs and expenses actually incurred." *Id.* § 709. Courts have uniformly held that Pennsylvania's regime "provides adequate process for plaintiffs to obtain just compensation." *Chainey v. Street*, 523 F.3d 200, 223 (3d Cir. 2008).

b. This case involves a cemetery in rural Pennsylvania. The Commonwealth, like many other States, and "with a refined and elevated sense of what is due to both the dead and the living, regards the resting-place of the dead as hallowed ground—not subject to the laws of ordinary

property." *Brown v. Lutheran Church*, 23 Pa. (11 Harris) 495, 500 (1854). Pennsylvania common law provides that "the ground once given for the interment of a body is appropriated for ever to that body." *Brendle v. German Reformed Congregation*, 33 Pa. (9 Casey) 415, 422 (1859). That ancient rule is based in "human rather than in property values." Percival E. Jackson, *Law of Cadavers and of Burial and Burial Places* 377 (1950). See also Gaius, *Commentaries*, trans. J.T. Abdy et al. 69 (1870) (reciting Roman law that "conveying a corpse into a place" rendered the ground *divini juris*, a place of the gods and "the property of no one"). Yet the burial right also gives rise to a singular interest in real property—an implied "perpetual servitude or easement" that protects both "the repose of the ashes of the dead, and the religious sensibilities of the living," "who may visit the spot in future generations." *Beatty v. Kurtz*, 27 U.S. (2 Pet.) 566, 584–85 (1829).

Cemetery access is a core component of this distinctive property right. If human remains are buried on private property, the common law curtails the "law[] of ordinary property," *Brown*, 23 Pa. at 500, that otherwise entitles the owner to exclude others. See generally Alfred L. Brophy, *Grave Matters: The Ancient Rights of the Graveyard*, 2006 BYU L. Rev. 1469, 1473–93. In some States, the only beneficiaries of the right to visit cemeteries are the next-of-kin of the deceased, see *id.* at 1479, but Pennsylvania courts have not imposed that restriction. Cf. *St. Peter's Evangelical Lutheran Church v. Kleinfelter*, 8 Pa. D. & C. 612, 614 (Pa. Ct. Com. Pl. 1926) (holding that "any * * * person of the community" may enforce the public interest in cemetery preservation).

The Pennsylvania General Assembly recently codified the common law by unanimously enacting a statute

providing that every "individual has a right to reasonable access for visitation to a burial plot" on private property. Act of Dec. 21, 2017, Pub. L. No. 1205, No. 64, § 2, codified at 9 Pa. C.S. § 702(1). That right of "reasonable access" to gravesites carries forward the common law, which had allowed "reasonable and usual enjoyment" of cemeteries by the general public. Jackson, *supra*, at 373. See also *McDonald v. Monongahela Cemetery Co.*, 55 Pitts. 385 (Pa. Ct. Com. Pl. 1908), aff'd, 75 A. 38 (Pa. 1909); 14 Am. Jur. 2d *Cemeteries* § 39 (1964) ("Persons entitled to visit, protect, and beautify graves must be accorded ingress and egress from the public highway next or nearest to the cemetery, at [r]easonable times and in a reasonable manner."). The statute clarifies that it is "reasonable" for a homeowner with a cemetery on her property to "designate the frequency, hours, and duration of visitation," 9 Pa. C.S. § 703(e), or to establish "prearranged times for visitation and the methods of ingress and egress to the burial plot." *Id.* § 703(d). Pennsylvania long has given its townships power to "make rules and regulations regarding the location, operation and maintenance of cemeteries" to "secure the health, safety, and welfare of the citizens of the township." 53 Pa. C.S. §§ 65607(1), 66536(a).

B. The Present Controversy

1. In 2008, petitioner, for nominal consideration, acquired from her sister "approximately 90 acres" of farmland in the Township of Scott, Pennsylvania. Pet. App. B2. See also J.A. 147 (deed). The property contains petitioner's "primary residence, as well as farmland and grazing areas for horses, cattle and other farm animals." Pet. App. B2. It also contains a cemetery in which her neighbors' ancestors allegedly are buried. See *id.* at A4; J.A. 114, 124. Petitioner at one time disputed the existence of

this cemetery, but she now accepts it for purposes of this case. Pet. Br. 6 n.2. The cemetery sits in an "open field" beyond the curtilage of her home. Pet. App. A11.

In 2012, before the General Assembly enacted its cemetery-access statute, but against the backdrop of the common law, the Township passed an ordinance "relating to the operation and maintenance of cemeteries." J.A. 20 (capitalization altered). See 53 Pa. C.S. § 66536(a). In pertinent part, that ordinance requires landowners to adequately "maintain and upkeep" cemeteries and not "unreasonably restrict [public] access" to them "during daylight hours." J.A. 22. The Township's Code Enforcement Officer may "enter upon" private land "for the purposes of determining the existence of and location of any cemetery." *Id.* at 22–23. A landowner "found liable" for a violation of the ordinance "in a civil enforcement proceeding" is subject to a fine of between $300 and $600. *Id.* at 23.

In 2013, having been "advised by Township residents" of a noncompliant cemetery on petitioner's property, J.A. 27; see also J.A. 134, the Code Enforcement Officer visited her farm and verified "multiple grave markers/tombstones." *Id.* at 107. Finding the cemetery both inaccessible and in disrepair, the officer sent petitioner a "notice of violation" alerting her to the terms of the ordinance and directing her to maintain the cemetery properly and to permit visitors "as required by the ordinance." *Id.* at 108. The notice stated that the Township would enforce the ordinance if petitioner refused to comply. *Id.* at 109.

2. After receiving the notice, petitioner sued the Township in the Court of Common Pleas and sought an emergency injunction to set aside the ordinance on several grounds, including that it allegedly effected a "taking

without compensation." J.A. 138. See also *id.* 175–77. Petitioner also sought a declaration that the ordinance was "unconstitutional, void, ineffective and without force." *Id.* at 39. Neither her complaint nor her motion invoked the Commonwealth's inverse-condemnation procedure; petitioner did not ask the Court of Common Pleas to appoint viewers to ascertain just compensation or, in the alternative, to compel the Township to file a declaration of taking.

The state court entered a consent order whereby the Township agreed to withdraw its notice of violation and stay enforcement of the ordinance against petitioner while the court considered her requests for injunctive and declaratory relief. J.A. 178. The court later decided that the case was "not in the proper posture for a decision to be rendered on [those] forms of relief," *id.* at 5, because petitioner could not invoke equity jurisdiction to derail an enforcement action without showing irreparable harm. *Id.* at 39–40. Petitioner did not seek immediate review of that decision, *id.* at 34, nor did she amend her complaint to request a different "form of relief," *i.e.*, just compensation.

After the Code Enforcement Officer issued petitioner a second notice of violation, J.A. 110–12, petitioner moved the state court to hold the Township in contempt for violating the consent order that had temporarily stayed enforcement of the ordinance. The court denied the motion because "it was reasonable for the Township to conclude" that the denial of petitioner's motion for injunctive and declaratory relief vacated the provisional remedy. *Id.* at 26.

Petitioner's state-court suit nominally remains pending, but she has "not petition[ed] the court to initiate the process for ascertaining and awarding just compensation" under state law. Pet. App. B15. Nor has the Township or any other party sued to enforce the cemetery ordinance.

3. While her contempt motion was pending in state court, petitioner filed the instant case against respondents in the U.S. District Court for the Middle District of Pennsylvania and sought relief under Section 1983.

a. Petitioner initially alleged that the "enactment and enforcement of" the Township's cemetery ordinance violated her constitutional rights under the Fourth, Fifth, and Fourteenth Amendments. J.A. 42. When the Township moved to dismiss her complaint, petitioner amended it and added an alleged First Amendment violation. *Id.* at 47. The Township again moved to dismiss, and the district court granted that motion because petitioner "failed to adequately state claims for violations of her constitutional rights under § 1983." *Id.* at 42. In particular, she "fail[ed] to plead" a "plausible" claim that the ordinance had effected a "taking without just compensation." *Id.* at 77–79.

The district court gave petitioner "one [more] opportunity to * * * state a claim" upon which relief could be granted, J.A. 89, and she filed a second amended complaint that again pleaded multiple "deprivation[s] of her civil rights * * * pursuant to 42 U.S.C. Section 1983." *Id.* at 92. She still did not plead a simple claim for just compensation. The court again granted the Township's motion to dismiss for "failure to state a claim upon which relief c[ould] be granted." Fed. R. Civ. P. 12(b)(6). The court dismissed the claim that the ordinance, either "on its face" or "[a]s applied to" petitioner, infringed her constitutional right to recover compensation for a taking of property. J.A. 102–03. The court thus held that petitioner could not proceed under Section 1983 because she "ha[d] not pursued" the state's "constitutionally adequate" procedure "for obtaining just compensation." Pet. App. B14–B15.

b. The court of appeals affirmed. Pet. App. A1–A33. It first observed that "the government does not violate the Fifth Amendment simply because one of its actions 'constitutes a taking.'" *Id.* at A23 (citation omitted). Rather, a taking "simply gives rise to an unqualified constitutional obligation to compensate the property owner." *Id.* at A24 (internal quotation marks and citation omitted). The court found that obligation met here by Pennsylvania's "inverse-condemnation proceedings," which constitute "a reasonable, certain and adequate provision for obtaining compensation." *Id.* at A28. See also *ibid.* (summarily rejecting petitioner's suggestion that "a self-contained [compensatory] mechanism" must appear within the four corners of the ordinance). Because petitioner had not invoked the requisite state procedure, the court reasoned, she could not claim to have been deprived of her constitutional right to recover compensation for a taking. *Ibid.*

Petitioner argued that at least her "facial taking" claim should proceed irrespective of the availability of a state-law remedy, but the court of appeals discerned that this claim too was "unavoidably" a "claim[] for compensation." Pet. App. A26–28. "When a party challenges the fundamental validity of a law," the court explained, "the claim turns on an issue that arises logically and temporally prior to the denial of compensation" and thus does not rise or fall on the availability of just compensation. *Id.* at A24. The fate of *petitioner's* "facial" challenge, by contrast, turned on whether compensation for any taking effected by the ordinance was available through a reasonable, certain, and adequate procedure. *Id.* at A28. Petitioner did not allege that the ordinance would have been unlawful if compensation was paid. She did not, for example, allege that the Township lacked authority to enact the ordinance, or that it had "taken" her land for a reason other than

"public use." U.S. Const. Amend. V. The court of appeals therefore held that *Williamson County* applied equally to her facial and as-applied claims.

The court of appeals next rejected petitioner's contention "that she exhausted state-law remedies because she sued unsuccessfully in state court." Pet. App. A28. Petitioner "d[id] not argue that inverse-condemnation proceedings would be unavailable or futile." *Id.* at A31. And, because petitioner "only sought declaratory and injunctive relief, not compensation," from the state court, she "could not have 'been denied compensation.'" *Id.* at A29.

Lastly, the court of appeals declined petitioner's invitation to "waive her failure" to pursue the State's postdeprivation remedy for "prudential" reasons. Pet. App. A30–A31. Petitioner argued that it "would be more efficient" for a federal court to entertain the Section 1983 claims now that she had filed them. *Id.* at A31. The court of appeals pointed out that this "would be true in *any* case" in which a plaintiff refused to utilize a postdeprivation remedy. *Ibid.* Allowing petitioner to proceed thus would make future plaintiffs less likely "to pursue relief through proper channels." *Id.* at A32.

SUMMARY OF ARGUMENT

The Just Compensation Clause does not confer a right to private property simpliciter; it confers the right to recover just compensation for property lawfully taken for public use. As this Court has held since the 19th century, that right is secured if the property owner has a reasonable, certain, and adequate means to recover compensation; and one such means is an inverse-condemnation suit instituted by the owner after property is taken.

Petitioner concedes that she was entitled to file an inverse-condemnation suit in state court to recover compensation for any taking of her property by the Township. And she does not and could not seriously argue that such an action is an unreasonable, uncertain, or inadequate means to recover just compensation. The two footnotes in which petitioner so suggests (Br. 38 n.14, 45 n.18) are insufficient to preserve the argument, and wholly unpersuasive in any event. In the end, petitioner candidly admits (Br. 13) that her claim against respondents "does not rest on a violation" of any federal right.

Her case thus reduces itself to the question whether a cause of action under Section 1983 lies if there has been no violation of a federal right. Congress answered that question unambiguously: To proceed under Section 1983, a person must have been "depriv[ed] of [a] right[], privilege[], or immunit[y] secured by the Constitution [or] laws." This Court accordingly has held in a variety of settings that where the infringement of a constitutional right turns on the unavailability of an adequate postdeprivation remedy—as is the case under the Just Compensation Clause—the availability of such a remedy defeats a claim pleaded under Section 1983.

In *Williamson County v. Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985), this Court correctly applied that statutory rule to the Just Compensation Clause right and held that a property owner who forgoes her right to file suit in state court to recover just compensation for a taking cannot then sue under Section 1983 and claim to have been deprived of that right. Respondents concur with the Solicitor General (Br. 19–21) that, properly understood, the holding of *Williamson*

County is grounded in the Section 1983 cause of action rather than abstract notions of "prudential ripeness." Petitioner has no cause of action under Section 1983 for the simple reason that her rights have not been infringed.

Petitioner shies away from the Section 1983 claim that she pleaded and instead hints at a possible claim seeking just compensation directly under the Fourteenth Amendment. Such a claim is not properly presented and should not be considered. That claim would not be viable anyway, for the same reason that petitioner's Section 1983 claim is not viable: Pennsylvania's adequate postdeprivation remedy ensures that the Fourteenth Amendment is not violated when property is taken for public use. This Court also need not and should not address the Solicitor General's novel and incorrect theory that all inverse-condemnation claims arising under state law in fact "arise under" federal law within the meaning of 28 U.S.C. § 1331. This Court granted review to address petitioner's "federal" claim under Section 1983, Pet. Br. i, not a state-law claim that she has never pleaded in any court.

There is compelling reason to adhere to *Williamson County* apart from its correctness. Statutory *stare decisis* is an almost categorical rule of decision, especially when the statutory scheme remains a focus of congressional attention. Legislators repeatedly have tried and failed to authorize a plaintiff in petitioner's shoes to pursue just compensation in federal court. It would be inappropriate for this Court to intercede and jettison the plain text of Section 1983—a statute that gives rise to as much litigation as any in the U.S. Code—solely to provide special treatment to a class of plaintiffs whose federal rights have not been violated and who may turn to state courts to recover just compensation for any property of theirs that has been

taken. Nor should this Court step in to exempt state-court inverse-condemnation actions from the reach of the full-faith-and-credit statute, after having unanimously declined to do so in *San Remo Hotel, L.P. v. City & County of San Fransisco*, 545 U.S. 323 (2005).

Allowing state courts to decide inverse-condemnation claims against local governments in the ordinary course serves values of federalism and comity that this Court has recognized have particular force in the context of land-use regulation. State courts are not merely *adequate* forums for adjudicating those claims, they are *the best* forums for doing so. This case illustrates why. The Lackawanna County Court of Common Pleas is likely to be most familiar with the common-law right of cemetery visitation and how it maps onto the township ordinance and state statute that address the same subject. And, if any taking occurred in this case—which respondents insist it did not—then just compensation would be ascertained in the first instance by an established panel of local valuation experts retained by the state court.

Rather than cast aside that venerable Pennsylvania institution and the plain language of one of our oldest and most important civil-rights statutes, this Court should reaffirm the holding of *Williamson County* and affirm the judgment of the court of appeals.

ARGUMENT

I. *Williamson County* Was Decided Correctly

"The first inquiry in any § 1983 suit * * * is whether the plaintiff has been deprived of a right 'secured by the Constitution.'" *Baker v. McCollan*, 443 U.S. 137, 140 (1979) (quoting 42 U.S.C. § 1983). The Constitution does not secure an unconditional right to private property; it

secures the right to recover just compensation when private property is taken for public use. A long line of precedent, not challenged by petitioner, holds that an inverse-condemnation action against the government guarantees the constitutional right to recover compensation for a taking. In *Williamson County*, this Court straightforwardly applied that precedent to hold that a property owner who forgoes an available and adequate inverse-condemnation remedy has not been deprived of any constitutional right and thus cannot proceed under Section 1983. That holding is sound and should be reaffirmed.

A. A taking of property for public use is constitutional if the owner may file an inverse-condemnation suit to recover just compensation.

1. The Just Compensation Clause provides that "private property" shall not "be taken for public use, without just compensation." U.S. Const. Amend. V. Without its last three words, the Clause would outlaw eminent domain entirely and thereby threaten the "independent existence and perpetuity" of government. *Kohl v. United States*, 91 U.S. (1 Otto) 367, 371 (1875). See also *Boom Co. v. Patterson*, 98 U.S. (8 Otto) 403, 406 (1878) ("[T]he right to take private property for public uses[] appertains to every independent government."). But the restrictive phrase *without just compensation* "makes plain," *Lingle*, 544 U.S. at 536, that the Clause does not confer a right not to have one's property put to public use. It merely confers "the right to recover just compensation for property taken." *First English*, 482 U.S. at 315 (quoting *Jacobs*, 290 U.S. at 16).

A corollary to that "basic understanding" of the Just Compensation Clause, *First English*, 482 U.S. at 315, is that the Clause "presupposes" the "underlying validity" of

the government action effecting the taking. *Lingle*, 544 U.S. at 543. Here, because petitioner has abandoned her challenges to the validity of the Township's ordinance, she must accept that the Township, in directing her to maintain the cemetery on her land and not unreasonably restrict visitors, lawfully exercised authority delegated by the state legislature. See Pet. Br. 6 n.2. A holding that the Just Compensation Clause *prohibited* that exercise of authority would be self-contradictory. Because the Clause applies to "otherwise proper interference[s]" with private property rights, *First English*, 482 U.S. at 315, the constitutional right it secures is the right to recover compensation if an interference amounts to a "taking."

Just like the Fifth Amendment, Section 1 of the Fourteenth Amendment secures the property owner's right to recover just compensation for a taking. Section 1 provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, § 1. One of the rights that the Fourteenth Amendment protects from state infringement is the right to recover compensation for property taken for public use. See *Chicago, B. & Q. R.R.*, 166 U.S. at 235–36. Representative John Bingham of Ohio drafted Section 1 with the Just Compensation Clause "especially in mind," *Monell*, 436 U.S. at 686, and a clear understanding that the Clause was not infringed unless the government "took property *without compensation*." Cong. Globe, 42d Cong., 1st Sess. App. 84 (1871) (Globe App.) (emphasis added).

2. This Court has held repeatedly since the 19th century that the availability of a reasonable, certain, and adequate inverse-condemnation procedure fulfills the duty

imposed by the Just Compensation Clause. See U.S. Br. 10–13 (collecting 14 cases). *Reasonable* means that the form and timing of proceedings are appropriate. *Certain* means that compensation is guaranteed if property is determined to have been taken. *Adequate* means that compensation must make the owner whole. Judicial inverse-condemnation procedures like those in Pennsylvania satisfy those three conditions.

It is *reasonable* for the government to "take land and pay for it later." *Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 10 (1984). The term "just compensation" itself denotes a *post hoc* indemnification for property that previously has been taken for public use. See, *e.g.*, James Madison, *Property*, Nat'l Gazette, Mar. 27, 1792, reprinted in 4 *Letters and Other Writings of James Madison* (R. Worthington ed. 1884); 8 Journals of the Continental Congress 622–23 (C. Ford ed. 1907) (offering "just compensation" to owner of vessel "burnt by the enemy" while "in the public service"); 5 Journals of the Continental Congress 713 (C. Ford ed. 1906) (awarding "just compensation" for wood taken by continental army).

Predeprivation process is the norm under the Due Process Clause, which is meant to protect persons "from the mistaken or unjustified deprivation of life, liberty, or property." *Carey v. Piphus*, 435 U.S. 247, 259 (1978). But an inverse-condemnation claim lies only when the government makes an "accurate decision" to take property for public use. *Williamson County*, 473 U.S. at 195 n.14. Because the propriety of the deprivation is uncontested, the owner's sole interest is in the money that is the full and perfect equivalent of the property taken. The owner typically will not suffer "serious harm" from a delay in receipt of those funds, because "any loss in the time value of the

money can be compensated by an interest payment." *City of Los Angeles v. David*, 538 U.S. 715, 717–18 (2003). See 26 Pa. C.S. § 713.

On the other hand, requiring the government to pay compensation before it takes any action that might interfere with property rights would cause "such delay" in achieving public goals "as would be a source of anarchy." *Louisville, C. & C. R.R. Co. v. Chappell*, 24 S.C.L. (Rice) 383, 392 (S.C. Ct. Err. 1838). "The supposedly safe and simple rule that requires in all cases the payment of compensation before entry" is utterly "impractical," Philip Nichols, *Eminent Domain* § 209, p. 633 (2d ed. 1917) (Nichols), especially for a generally applicable regulation like the one at issue here. See Pet. Br. 3 ("It is common to find private, family gravesites in the area because Pennsylvania state law allows so-called 'backyard burials.'").

The decision in *Parratt v. Taylor*, 451 U.S. 527 (1981), offers a useful "analog[y]." *Williamson County*, 473 U.S. at 195. *Parratt* held that a postdeprivation suit to recover damages for *lost* property satisfied the Due Process Clause because predeprivation safeguards could not possibly prevent the deprivation of property. Along the same lines, a postdeprivation suit to recover compensation for a "taking" satisfies the Just Compensation Clause because the property owner has no legitimate interest "in *preventing* the kind of deprivation at issue." *Zinermon v. Burch*, 494 U.S. 113, 129 (1990). That "special" feature of the Clause, *Williamson County*, 473 U.S. at 195 n.14, makes "the value of predeprivation safeguards * * * negligible," *Zinermon*, 494 U.S. at 129, just as in *Parratt*. That it does so for a different reason does not blunt the force of the analogy. Contra Pet. Br. 39 n.15.

Recovery of just compensation also must be *certain* and *adequate*, and inverse-condemnation suits again are up to the task. The owner of property taken for public use has "an unqualified right" to recover compensation that "can be enforced—that is, collected—by judicial process." *Sweet v. Rechel*, 159 U.S. 380, 403 (1895). If the alleged taker is a public entity, that condition is met by "the pledge of the good faith of the government" to pay its debts. *Crozier*, 224 U.S. at 307. See 26 Pa. C.S. § 303(b)(2) (pledging local tax revenues as "security for the payment" of just compensation). The owner also must be offered "the full and perfect equivalent of the property taken," so that she is placed "in as good position pecuniarily as [s]he would have been if h[er] property had not been taken." *Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299, 304 (1923). Inverse-condemnation judgments provide the requisite amount of compensation. See 26 Pa. C.S. § 713.

3. Petitioner does not dispute in the body of her merits brief that the Pennsylvania Eminent Domain Code armed her with a reasonable, certain, and adequate—and thus constitutionally sufficient—procedure to recover just compensation for any property that has been "taken" by the Township. Compare Pet. Br. 38–39 with Pet. 20–22. Only in a pair of footnotes does petitioner suggest that an inverse-condemnation proceeding cannot secure the constitutional right of a property owner to recover compensation for a taking. "A footnote is no place to make a substantive legal argument," *CTS Corp. v. Envt'l Prot. Agency*, 759 F.3d 52, 64 (D.C. Cir. 2014), especially one attacking a century of precedent. Petitioner's challenge to the sufficiency of Pennsylvania's inverse-condemnation process has ben abandoned and should not be considered. Cf. *City & County of San Francisco v. Sheehan*, 135 S. Ct. 1765, 1772–74 (2015). In any event, it lacks merit.

In her first such footnote (Br. 38 n.14), petitioner contends that the Constitution requires the specific governmental entity that takes the property to itself ascertain and pay just compensation. She argues that "a state court" in particular may not participate in determining liability or compensation if the court did not itself effect the alleged taking. *Ibid.* Petitioner offers no support for this proposed rule, and none exists. "[C]ourts have always been recognized as a coequal part of the State's sovereign decision-making apparatus," *Fed. Energy Regulatory Comm'n v. Mississippi*, 456 U.S. 742, 762 n.27 (1982) (*Mississippi*), and nothing in the Constitution bars a State from assigning to its courts the task of resolving claims against itself. Cf. *Glidden Co. v. Zdanok*, 370 U.S. 530, 551 (1962) ("Congress may create tribunals under Article III for the sole purpose of adjudicating matters that it might have reserved for legislative or executive decision.").

There is good reason for a State to make that assignment. The federal experience has shown that vesting the political branches with responsibility for claims adjudication is inadvisable. See *supra*, pages 4–5; H.R. Rep. No. 498, 30th Cong., 1st Sess. 6 (1848) (describing legislative claims-processing as "a system of unparalleled injustice, and wholly discreditable to any civilized nation"). Property owners in particular would be disserved if their claims for compensation could not be heard in the first instance by the judiciary, the one branch of government "designed not to protect the public at large but to protect individual rights." *Fed. Elec. Comm'n v. Akins*, 524 U.S. 11, 36 (1998) (Scalia, J., dissenting). Petitioner herself has asked a court to determine whether property was "taken" and, if so, what compensation is owed. She just does not trust a *state* court that is "bound" to make those same determinations under federal law. U.S. Const. Art. VI, cl. 2.

Petitioner's second footnote (Br. 45 n.18) argues that the government must "provide a [separate] self-contained mechanism for compensating property owners," Pet. App. A28, in every ordinance it enacts that might be held in one or more applications to "take" private property. Once again, there is no logic or precedent for that proposal. The Constitution does not mandate that "a general statute" prescribing the means to recover just compensation for *any* taking, *Sweet*, 159 U.S. at 404, be restated ad nauseam throughout state and local codebooks. It is far more "reasonable, certain, and adequate," *ibid.*, for the government to promulgate a single set of rules to process just-compensation claims. See, *e.g.*, *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1018 (1984) (holding that the generic compensatory mechanism in the Tucker Act secured the right to recover compensation for takings arising from application of the Federal Insecticide, Fungicide, and Rodenticide Act, which had no compensatory mechanism).

In sum, the availability of an inverse-condemnation action in state court ensures that private property may be taken for public use under color of state law without violating the Constitution.

B. A plaintiff invoking Section 1983 must allege a violation of the Constitution.

1. Nearly 150 years ago, Congress passed Section 1983 for the express purpose of "enforc[ing] the Provisions of the Fourteenth Amendment." 17 Stat. 13. Section 1983 does not itself "provide for any substantive rights"; it serves only "to ensure that an individual ha[s] a cause of action for violations of the Constitution." *Chapman*, 441 U.S. at 617. Congress decided to limit that cause of action to plaintiffs alleging "deprivation[s]" under color of state

law "of any rights, privileges, or immunities secured by the Constitution." 42 U.S.C. § 1983.

There is no daylight between the rights secured by the Fourteenth Amendment and the rights enforceable under Section 1983. The clear purpose of that provision was "the enforcement * * * of the Constitution * * * *to the extent of* the rights guarantied * * * by the Constitution." *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 934 (1982) (quoting Globe App. 81 (remarks of Representative Bingham, who drafted Section 1 of the Enforcement Act)) (emphasis added). The statute thus extends "as broad[ly] as the protection that the Fourteenth Amendment affords," but "'no further.'" *Id.* at 934 & n.17 (quoting Globe 579 (remarks of Senator Trumbell)).

Again, the right "secured by" the Just Compensation Clause, 42 U.S.C. § 1983, is not a right to retain property needed for public use; it is a right to recover just compensation if that property is taken. To prevail under Section 1983, then, a property owner must establish not merely that she was "depriv[ed] of" property, but also that the State "depriv[ed]" her of the right to recover just compensation for that property. 42 U.S.C. § 1983. That is, in a nutshell, the holding of *Williamson County*.

2. Like the property owner in *Williamson County*, petitioner pleaded her claims under Section 1983. See J.A. 100–03 (Counts I and II of operative complaint).[3] She accordingly alleged in the lower courts, and in her petition for certiorari, that the Township violated the Constitution "because it took [her] property *without compensation*."

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[3] The Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, mentioned in Count III, J.A. 104–06, merely "enlarge[s] the range of remedies available" with respect to an independent cause of action. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671–72 (1950).

Pet. App. A27. See also Pet. 22; J.A. 42, 57. After review was granted, petitioner reversed course and now "reject[s]" the "premise" that her Section 1983 "claim rests on a 'violation' of the Just Compensation Clause." Pet. Br. 38 n.14. See also *id.* at 13, 37. The Solicitor General also has reversed course and now argues (Br. 31) that Congress meant for Section 1983 to redress actions that "did not violate" the Constitution, but only if the plaintiff is a property owner alleging a taking for public use. 42 U.S.C. § 1983. Contra Brief of United States, *Williamson County*, O.T.1984, No. 4, pp. 16–17.

Petitioner and the Solicitor General are incorrect. The plain language of Section 1983 limits its cause of action to a person subjected to "the *deprivation* of any rights, privileges, or immunities secured by the Constitution." 42 U.S.C. § 1983 (emphasis added). A "deprivation" of a right is "a taking away" of that right, Worcester's Dictionary 386 (1860), or, in modern parlance, a "violation" of that right. See *Baker*, 443 U.S. at 146 ("Section 1983 imposes liability for violations of rights protected by the Constitution."). Section 1983 provides a remedy only "for *unconstitutional* state action." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 68 (1989) (emphasis added). Accord *Chapman*, 441 U.S. at 617.

The Solicitor General posits (Br. 31) that "deprivation" means something short of a violation only in "the unique context of the [Just Compensation] Clause," and that State subdivisions (but not natural "person[s]," 42 U.S.C. § 1983) can be held liable under Section 1983 for takings of property for public use that do not violate the Constitution. But it is "dangerous" to ascribe a different meaning to statutory language in its different applications, *Clark v.*

Martinez, 543 U.S. 371, 386 (2005), and it is no less dangerous to interpret Section 1983 to match the Solicitor General's "perceived 'purpose' of a constitutional provision," rather than the "actual constitutional right[]" that it confers. *Chavez v. Martinez*, 538 U.S. 760, 780 & n.2 (2003) (Scalia, J., concurring in part in the judgment).

For her part, petitioner ignores the statutory text completely and fails to observe the "strict" distinction between "a simple suit for just compensation," which does not allege a violation of the Constitution, and a Section 1983 suit, which seeks "damages for the unconstitutional denial of such compensation." *Del Monte Dunes*, 526 U.S. at 710. A suit for just compensation is premised only on the deprivation of *property* (an Article III injury, but not a constitutional violation), whereas a Section 1983 suit requires a deprivation of the *constitutional right* to recover compensation for a taking. Put another way, a suit for just compensation *secures* the constitutional right, whereas a Section 1983 action redresses a State's *failure to secure* that right. The "takings claim" that petitioner now wants to plead, Pet. Br. 35, is a simple claim for just compensation that does not allege a constitutional violation. But that claim does not sound under Section 1983.[4]

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[4] The distinction between a Section 1983 suit and a simple suit for just compensation is no mere technicality. There is "no doubt that claims brought pursuant to § 1983 sound in tort," *Del Monte Dunes*, 526 U.S. at 709, because they seek redress for personal "injuries caused by the violation of * * * legal rights." *Carey*, 435 U.S. at 257. Just-compensation claims, by contrast, *do not* sound in tort and center on injury to property. See 28 U.S.C. § 1491(a)(1) (conferring jurisdiction over claims seeking just compensation from the United States, which do "not sound[] in tort"). While not formally styled as an *in rem* proceeding, an inverse-condemnation suit filed by a property owner is animated by the same *in rem* concepts that govern a direct condem-

The dichotomy between claim-as-right and claim-as-remedy-for-deprivation-of-right is, as petitioner obliquely admits, not unique to the Just Compensation Clause. Pet. Br. 28 (citing *Zinermon*, 494 U.S. at 124–39). Its neighbor, the Due Process Clause of the Fifth Amendment, provides in parallel structure that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V. A deprivation of property is perfectly constitutional if effected through due process. In some cases, "due process of law" is a state-law postdeprivation suit against the government official who deprived a person of property. *E.g.*, *Hudson*, 468 U.S. at 533; *Parratt*, 451 U.S. at 543–44; *Bob Jones Univ. v. Simon*, 416 U.S. 725, 746 (1974). In such cases, a Section 1983 action is not "an *alternative remedy*" that itself effects due process, Pet. Br. 38, but rather an action for damages for want of due process. See *Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank*, 527 U.S. 627, 643 (1999) ("[O]nly where the State provides no remedy, or only inadequate remedies, * * * could a deprivation of property without due process result."); *Hudson*, 468 U.S. at 539 (O'Connor, J., concurring) (noting the similar relationships of the Due Process and Just Compensation Clauses to Section 1983).

The same is true of any constitutional right the infringement of which turns on unavailability of an adequate postdeprivation remedy. See, *e.g.*, *Christopher v. Harbury*, 536 U.S. 403, 415 (2002) (explaining that a plaintiff alleging a denial of her constitutional right to access the courts must "identify a remedy * * * not otherwise available in some suit that may yet be brought"); *Carter v.*

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nation suit filed by the government. See, *e.g.*, 26 Pa. C.S. ch. 5 (applying special public-notice and intervention rules to both types of suits). Those concepts are foreign to a tort suit filed under Section 1983.

Greenhow, 114 U.S. 317, 322 (1885) (rejecting Section 1983 claim alleging Contracts Clause violation because "the only right secured to" the plaintiff was "a right to have a judicial determination declaring the nullity" of a state law that impaired a contract, a remedy to which "[h]e ha[d] simply chosen not to resort"). Cf. *United States v. Verdugo-Urquidez*, 494 U.S. 259, 264 (1990) (explaining that coerced testimony elicited "prior to trial may ultimately impair" the Fifth Amendment right against self-incrimination, but that no Section 1983 claim can lie unless and until testimony is used "at trial"). A violation of such a right is not "complete" if adequate postdeprivation remedies are available. *Williamson County*, 473 U.S. at 195.

Williamson County thus does not relegate "property owners to second-class citizens in the protection of their rights." Pet Br. 29. It simply places them on a par with every other plaintiff that cannot allege "the deprivation of any rights, privileges, or immunities secured by the Constitution." 42 U.S.C. § 1983. Petitioner's position rests on "a generally framed principle that every person asserting a federal right is entitled to one unencumbered opportunity to litigate that right in a federal district court." *Allen v. McCurry*, 449 U.S. 90, 103 (1980). See Pet. Br. 28 ("[T]he idea that an entire class of constitutional plaintiffs can be shut out of federal courts in the first instance is unknown to constitutional doctrine."). But neither the Constitution nor any federal statute confers such an entitlement. *Allen*, 449 U.S. at 103. Congress limited the Section 1983 cause of action to persons alleging deprivations of their rights, and petitioner cannot escape the fact that her case "does not rest on a violation" of any right. Pet. Br. 13.

Lastly, petitioner invokes (Br. 27) the teaching of *Patsy v. Board of Regents*, 457 U.S. 496 (1982), that "exhaustion of administrative remedies in § 1983 actions should not be judicially imposed." *Id.* at 502. The plaintiff in *Patsy* alleged that her employer had violated the Equal Protection Clause of the Fourteenth Amendment by "deny[ing] her employment opportunities solely on the basis of her race and sex." *Id.* at 498. Because the alleged violation occurred at the moment she was "den[ied]" the "equal protection of the laws," U.S. Const. Amend. XIV, § 1, the plaintiff could seek relief immediately under Section 1983. Petitioner, by contrast, has not been denied any right under the Just Compensation Clause and therefore cannot state a claim under Section 1983. *Williamson County* "d[id] not engraft an exhaustion requirement upon § 1983, but rather den[ied] the existence of a cause of action," *Heck v. Humphrey*, 512 U.S. 477, 489 (1994), because "the governmental action [was] not unconstitutional." *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 128 (1985).

* * *

Section 1983 means what it says. A plaintiff must allege "the deprivation of" a constitutional "right" in order to state a claim. The right "secured by" the Just Compensation Clause is the right to recover compensation through a reasonable, certain, and adequate process. A plaintiff who refuses to follow such a process in state court may not use Section 1983 to obtain relief in federal court. That holding of *Williamson County* should be reaffirmed.

II. *Williamson County* Controls This Case

Like the property owner in *Williamson County*, petitioner brought suit in federal court and pleaded a Section

1983 claim premised on the Just Compensation Clause after foregoing an available state-law inverse-condemnation remedy. This Court held in *Williamson County* that a plaintiff in her situation cannot prevail on the claim that she pleaded. Petitioner opted to proceed solely under Section 1983, and this Court should not countenance her attempt (and that of the Solicitor General) to smuggle in novel and unmeritorious claims that were "not pleaded in the complaint, argued to the Court of Appeals as a ground for reversing the District Court, or raised in the petition for certiorari." *DeShaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189, 195 n.2 (1989).

A. This Court's precedent mandates dismissal of petitioner's Section 1983 claim.

1. Petitioner disparages (Br. 22) the inverse-condemnation holding of *Williamson County* as "dicta" authored "without adequate briefing from the parties." That is wrong; it was an alternative holding of the Court. See *United States v. Title Ins. & Trust Co.*, 265 U.S. 472, 486 (1924) ("[W]here there are two grounds, upon either of which an appellate court may rest its decision, and it adopts both, the ruling on neither is obiter, but each is the judgment of the court, and of equal validity with the other." (internal quotation marks and citation omitted)). The property owner in *Williamson County* could not press a Section 1983 claim based on an alleged taking without just compensation because the owner had not shown *either* a taking (because it "ha[d] not yet obtained a final decision regarding the application of [state law] to its property") *or* the want of compensation (because it had not "utilized the procedures [the State] provide[d] for obtaining just compensation"). 473 U.S. at 186.

This Court's resolution of a question of law "properly presented, fully argued, and elaborately considered in the opinion" is not dictum. *Fla. Cent. Ry. Co. v. Schutte*, 103 U.S. (13 Otto) 118, 143 (1880). *Williamson County* properly presented the question whether a landowner may press a Section 1983 claim premised on a violation of the Just Compensation Clause after foregoing a State's inverse-condemnation remedy. That question was antecedent to, and thus "fairly included" within, S. Ct. R. 15.1(a) (1980), the merits question on which *certiorari* was granted, and resolution of the antecedent issue disposed of the suit. The issue was fully briefed by the parties, Brief of Respondent, O.T.1984, No. 4, pp. 37–40; Reply Brief of Petitioner, O.T.1984, No. 4, pp. 3–7, and aired at oral argument. Tr. 7, 21–22, 51–55. This Court then thoroughly considered the issue in a self-contained section of its opinion spanning four pages of the U.S. Reports. 473 U.S. at 194–97. Its resolution of the issue was assuredly a holding.

2. That holding "rest[ed] on the principle that so long as compensation is available for those whose property is in fact taken, the governmental action is not unconstitutional," and thus cannot give rise to a Section 1983 claim. *Riverside Bayview Homes*, 474 U.S. at 128. The *Williamson County* rule has at times been misunderstood because this Court characterized the plaintiff's Section 1983 claim as "not ripe." 473 U.S. at 186. *Ripeness* is a term increasingly confined to the jurisdictional realm. See *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2347 (2014). But, as the Solicitor General rightly explains (Br. 19–21), *Williamson County* rested not on "Case [or] Controversy" grounds, U.S. Const. Art. III, § 2, but on the ground that the plaintiff did not establish the elements of a Section 1983 claim. In any event, "nothing of substance" in the decision "*turned upon* whether the existence of a

cause of action was technically jurisdictional." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 91 (1998).

Dicta in this Court's subsequent opinions has gradually unmoored the *Williamson County* rule from its statutory origins and reframed it as a "prudential ripeness" rule. *E.g.*, *Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725, 733–34 (1997). A court assessing prudential ripeness considers "whether the factual record [i]s sufficiently developed" to support judicial review and "whether hardship to the parties would result if judicial review is denied." *Susan B. Anthony List*, 134 S. Ct. at 2347. Those factors overlap to some degree with the question whether a property owner has suffered a constitutional deprivation entitling her to a Section 1983 remedy. But the inquiries are not the same, and this case presents the opportunity to return the *Williamson County* rule to its origins and clarify that it depends not on prudence, "but rather * * * whether the claim is cognizable under § 1983." *Heck*, 512 U.S. at 483. Cf. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1386–88 (2014).

3. Properly understood, *Williamson County* permits a federal court to entertain a Section 1983 claim contesting the procedural adequacy of the State's postdeprivation remedy. Such a claim would allege a deprivation of the constitutional right to a reasonable, certain, and adequate procedure to recover compensation for a taking.[5] But petitioner has not preserved any argument that Pennsylvania's inverse-condemnation procedure is deficient in any of those ways, either on its face or as applied to her.

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[5] A claim that private property was "taken," but not for "public use," U.S. Const. Amend. V, also alleges a constitutional violation and is cognizable under Section 1983 as soon as the taking occurs.

Petitioner argues (Br. 30–33) that *Williamson County* leads to unjust results where a defendant removes a state-law inverse-condemnation claim to federal court, only to contend that the availability of a state-court remedy prevents the federal court from entertaining a Section 1983 claim. But there are three different ways that such cases could, consistent with *Williamson County*, be decided in federal court. First, the government defendant could be estopped from arguing that resolution of a claim it removed to federal court must await action by the state court. Cf. *Lapides v. Board of Regents*, 535 U.S. 613, 619 (2002). Second, the federal court could hold that the defendant had violated "the Fourteenth Amendment's Due Process Clause" by "denying [a] potential litigant[] use of established adjudicatory procedures." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429–30 (1982). See also *Reich v. Collins*, 513 U.S. 106, 111 (1994) (holding that a State cannot "h[o]ld out what plainly appear[s] to be a 'clear and certain' postdeprivation remedy" and then "reconfigure its scheme, unfairly, in *midcourse*" to withdraw it); *Allen*, 449 U.S. at 101 (noting that Section 1983 provides "a federal remedy * * * where state procedural law, though adequate in theory, was inadequate in practice"). Third, the federal court could take supplemental jurisdiction over the state-law inverse-condemnation claim and decide it in the first instance. See 28 U.S.C. § 1367.

This case does not present the question which of those paths is most appropriate, but it would be extraordinary to overturn *Williamson County* on the ground that a court in a different case might misread the opinion as requiring a federal court to withhold decision in that unusual circumstance. Federal courts generally have rejected procedural shenanigans by government defendants and entertained property owners' Section 1983 claims. *E.g.*,

Sherman v. Town of Chester, 752 F.3d 554, 563–64 (2d Cir. 2014); *Sansotta v. Town of Nags Head*, 724 F.3d 533, 544–49 (4th Cir. 2013). Petitioner cites a grand total of *one* case in which a federal district court wrongly refused a property owner's entreaty to adjudicate a Section 1983 claim alleging a violation of the Just Compensation Clause after the owner's inverse-condemnation claim was removed to federal court. Pet. Br. 31 n.10 (citing *Seiler v. Charter Twp. of Northville*, 53 F. Supp. 2d 957 (E.D. Mich. 1999), where the claims were remanded back to state court). An isolated misapplication of the *Williamson County* doctrine does not show that it "is incapable of coherent and just application."[6] Pet. Br. 23 (capitalization altered).

There was no procedural chicanery in this case. Petitioner had "a realistic and fair opportunity," Pet. Br. 1, to file a single action in the Court of Common Pleas disputing

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[6] There was not "perfect compliance with the doctrine" in any of petitioner's other authorities. Pet. Br. 31. In three cases, the property owner did not invoke the State's inverse-condemnation statute. *Del-Prairie Stock Farm, Inc. v. County of Walworth*, 572 F. Supp. 2d 1031, 1032 (E.D. Wis. 2008); *Koscielski v. City of Minneapolis*, 393 F. Supp. 2d 811, 817–18 (D. Minn. 2005), aff'd, 435 F.3d 898 (8th Cir. 2006); *Anderson v. Chamberlain*, 134 F. Supp. 2d 156, 161–62 (D. Mass. 2001). In two cases, the property owner *asked* to return to state court rather than have a federal court adjudicate its Section 1983 claim. *Clifty Props., LLC v. City of Somerset*, No. 6:17-41, 2017 WL 4003024, at *3 (E.D. Ky. Sept. 11, 2017); *8679 Trout, LLC v. N. Tahoe Pub. Utils. Dist.*, No. 2:10-cv-01569, 2010 WL 3521952, at *6 (E.D. Cal. Sept. 8, 2010). In another case, the property owner's Section 1983 claim was held unripe because the government "ha[d] not rendered a final decision" applying its regulation to the property. *Doak Homes, Inc. v. City of Tukwila*, No. C07-1148, 2008 WL 191205, at *3 (W.D. Wash. Jan. 18, 2008). See Pet. Br. 10 ("This traditional 'finality' ripeness regime is not challenged here."). In the final case that petitioner cites, the property owner did not plead a Section 1983 claim at all. *Reahard v. Lee County*, 30 F.3d 1412, 1414 n.3 (11th Cir. 1994).

the validity of the Township's actions and, in the alternative, seeking compensation on takings grounds if their propriety was sustained. See *Blair Twp.*, 802 A.2d at 1289. Instead, she sought only the first "form[] of relief," J.A. 5, and respondents did not seek to remove her case to federal court. The state court's order declining to grant relief did not leave the case "in an unresolvable posture over which [she] had no control." Pet. Br. 7 n.3. Petitioner could have moved for reconsideration; moved to certify the order for immediate appeal, see Pa. R. App. P. 1311(b); or filed a praecipe for entry of an adverse judgment. See Pa. R. App. P. 301(e). Alternatively, she could have filed a new action in state court seeking an appointment of viewers to ascertain just compensation for a taking. Instead, she sued respondent in federal court claiming to have been deprived of the right that she had just declined to pursue.

B. Petitioner did not plead a simple claim for just compensation in federal court, and she could not have done so.

Petitioner ignores the Section 1983 claim she pleaded and hints at a different claim that she did not plead and that *Williamson County* did not expressly foreclose—a simple claim for just compensation brought directly under the Fourteenth Amendment. This Court should not consider, much less recognize, that novel claim, which has not been addressed by the courts below or any other court of which respondents are aware. For the same reasons (and more), the Court should disregard the Solicitor General's plea as *amicus curiae* to broaden the question presented to cover yet another claim that petitioner did not plead, namely, the simple claim for just compensation authorized by Pennsylvania's inverse-condemnation statute. The Solicitor General is wrong to contend that this claim would

"arise under" federal law and thus fall within the statutory subject-matter jurisdiction of the federal district courts.

1. Petitioner did not plead a claim directly under the Fourteenth Amendment, and at times she disavows the existence of such a cause of action. Pet. Br. 34. But she elsewhere claims an "entitle[ment] * * * to a damages remedy," *ibid.*, on the theory "that claims for just compensation are grounded in the Constitution itself." *First English*, 482 U.S. at 315. See also Pet. Br. 39 n.13 (describing the Just Compensation Clause as "a self-executing damages remedy"). This Court need not and should not address an on-again, off-again argument based on a novel constitutional claim not presented to the courts below.

Regardless, there is no such claim. To be sure, this Court has held, "in the absence of * * * a statutory remedy" for a taking by the United States, Nichols § 490, p. 1322, that the Fifth Amendment "creates a cause of action" to recover just compensation. *United States v. Testan*, 424 U.S. 392, 401–02 (1976). See *First English*, 482 U.S. at 315 (quoting *Jacobs*, 290 U.S. at 16). But it does not follow that the Fourteenth Amendment creates a federal cause of action for compensation against a *State* in the *presence* of a statutory remedy. Only a "depriv[ation]" by a "State" of the right to recover just compensation, U.S. Const. Amend. XIV, § 1, could possibly give rise to such a claim. See *Chicago, B. & Q. R.R.*, 166 U.S. at 241.

Section 1983 itself ensures that no direct cause of action under the Fourteenth Amendment need be implied in order to vindicate a property owner's constitutional right to recover compensation for a taking. If the State does not provide a reasonable, certain, and adequate process for the owner to recover compensation for a taking, Section 1983 steps into the breach to provide a federal remedy.

One of those two "alternative remedial structure[s]" is always available, and that "alone" would defeat any nonstatutory claim that petitioner might have pleaded. *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1858 (2017). See U.S. Br. 27 n.8.

But petitioner did not plead such a claim, so the proper course is for this Court not to address it. The admonition that this is "a court of review, not of first view," *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005), applies with heightened force to constitutional causes of action. See *Christopher*, 536 U.S. at 417. That such a cause of action would be available against "State[s]" themselves, U.S. Const. Amend. XIV, § 1, not just "person[s]," 42 U.S.C. § 1983, is all the more reason to await a case in which the question is properly presented. See U.S. Const. Amend. XI. Petitioner is "master[] of [her] complaint," *Caterpillar Inc. v. Williams*, 482 U.S. 386, 395 (1987), and her seeming desire to revise it during proceedings before this Court is no reason to disturb the judgment of the court of appeals.

2. The Solicitor General likewise is dissatisfied with petitioner's complaint, and he invites this Court (Br. 22–27) to remand so that she can amend it a third time to add the very claim that she has steadfastly refused to pursue: a simple claim for just compensation arising under Pennsylvania law. Accepting the Solicitor General's invitation would require this Court to resolve whether 28 U.S.C. § 1331 confers jurisdiction on the federal courts to decide inverse-condemnation claims that arise under state law. That issue is not fairly included within the question presented, has never been briefed by the parties, was not addressed below, is a matter of first impression in *any* court, and raises serious constitutional and practical concerns. This Court should not address the issue under these circumstances. But, if it does so, this Court should hold that

federal courts cannot hear inverse-condemnation claims against local governments as a matter of course.

This case presents the question whether a property owner may press a "*federal* takings claim[]" after foregoing the State's inverse-condemnation remedy. Pet. Br. i (emphasis added). The question whether petitioner may pursue a *state-law* claim in federal court may be "related to the one [she] presented, and perhaps complementary to the one [she] presented, but it is not 'fairly included therein.'" *Yee v. City of Escondido*, 503 U.S. 519, 537 (1992) (quoting this Court's Rule 14.1(a)) (emphases omitted). Moreover, while "parties are not limited to the precise arguments they made below," *id.* at 534, they are limited to the precise *claims* they advanced. Petitioner does not press a state-law claim even in this Court; she mentions Section 1331 only in passing as "provid[ing] a federal forum for *federal* civil rights claims." Pet. Br. 27 (emphasis added). It would be unprecedented to consider a wholly new claim raised only by an *amicus curiae* in circumstances where this Court "would apparently be the first court in the Nation to determine," *Yee*, 503 U.S. at 538, whether every inverse-condemnation claim pleaded under state law "aris[es] under" federal law. 28 U.S.C. § 1331.

Regardless, the Solicitor General is wrong. As a general matter, "[a] suit arises under the law that creates the cause of action." *American Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260 (1916) (Holmes, J.). The federal "arising under" jurisdiction thus excludes claims arising under state law, save for "a 'special and small category' of cases," *Gunn v. Minton*, 568 U.S. 251, 258 (2013) (citation omitted), that "a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Grable &*

Sons Metal Prods., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 314 (2005). Consistent with the Fourteenth Amendment, Congress in 1871 approved a balance that gave the federal courts authority to entertain claims that local governments *violated* the Constitution. See 42 U.S.C. § 1983. But that "usual constitutional balance," *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 136 S. Ct. 1562, 1574 (2016), would be upset if federal courts routinely were to adjudicate state-law causes of action against local governments for actions that *do not violate* the Constitution or any other federal law. Cf. *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 160 (1997) (holding that Section 1331 conferred jurisdiction on a federal district court over a state-law claim alleging a "taking of property *without just compensation*" (emphasis added)).

Given the "tremendous number" of inverse-condemnation claims filed against local governments nationwide, *Grable*, 545 U.S. at 318, only a clear statement of legislative intent could justify such a result. But there is no evidence whatsoever that the 43d Congress—which first conferred general federal jurisdiction over claims arising under federal law—intended to unravel the delicate balance that the 42d Congress had struck in Section 1983. See Judiciary Act of 1875, ch. 137, § 1, 18 Stat. 470 (Mar. 3, 1875).

III. This Court Should Adhere To *Williamson County*

"[T]his Court does not overturn its precedents lightly," *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2036 (2014), and there is no "special justification" for doing so in this case. *Patterson v. McLean Credit Union*, 491 U.S. 164, 175 n.1 (1989). The Court follows an "almost categorical rule of stare decisis in statutory cases," *Rasul v. Bush*, 542 U.S. 466, 493 (2004) (Scalia, J., dissenting), and it should decline petitioner's invitation to transform

"the meaning and coverage of one of our oldest civil rights statutes" solely to allow property owners to forum shop. *Patterson*, 491 U.S. at 168. *Williamson County* "does not * * * preclude Congress from allowing just compensation claims to be brought in federal court," U.S. Br. 30 n.9, but Congress has chosen not to do so, repeatedly rebuffing efforts in recent years to expand Section 1983 to cover plaintiffs in petitioner's shoes. Its decision to leave Section 1983 intact honors the constitutional values of federalism and comity by leaving Pennsylvania and other States free to apply their time-tested compensatory mechanisms.

A. Congress has declined to grant a federal remedy to property owners whose constitutional rights have not been violated.

From the time it first confronted Section 1983, this Court has understood that a constitutional violation triggers that cause of action. See *Carter*, 114 U.S. at 322. That understanding "ha[s] not eroded over time." *Kimble v. Marvel Enter., LLC*, 135 S. Ct. 2401, 2410 (2015). See, *e.g.*, *Rehberg v. Paulk*, 566 U.S. 356, 361 (2012). "[A] whole web of precedents" is grounded in that understanding of Section 1983, *Kimble*, 135 S. Ct. at 2411, and uprooting it would have serious consequences that are hard to predict.

Revisiting the trigger for a Section 1983 claim would be particularly inappropriate here, where legislators have shown a "willingness to consider" amending the statute to single out property owners for special treatment. *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2413 (2014). Three times in the past two decades, the House of Representatives has passed legislation designed to broaden Section 1983 to encompass simple claims for just compensation brought against local governments. H.R. 4772, 109th Cong., 2d Sess., § 5 (Sept. 29, 2006); H.R.

2372, 106th Cong., 2d Sess., § 2 (Mar. 16, 2000); H.R. 1534, 105th Cong., 2d Sess., § 2 (Feb. 26, 1998). The failure of that legislation to attract support from the Senate is not a good reason for this Court to depart from the settled construction and plain text of the statute that Congress enacted in 1871, in compliance with the Constitution's bicameralism and presentment requirements.

Williamson County does not, as petitioner contends (Br. 29 n.9), render federal courts "subservient to state courts in the development of Fifth Amendment takings law." Property owners may invoke the diversity or supplemental jurisdiction of the federal courts in appropriate cases. See 28 U.S.C. §§ 1332(a), 1367.[7] Furthermore, review of federal questions in state-court judgments is available in this Court, which is the ultimate guarantor of "orderly development of takings law." Pet. Br. 33. See 28 U.S.C. § 1257(a). The Constitution does not require more.

Petitioner protests that, once the state court decides an inverse-condemnation claim, a Section 1983 claim is "dead on arrival" in federal court due to the federal full-faith-and-credit statute. Pet. Br. 11. See 28 U.S.C. § 1738. As discussed below, it comports with federalism for state courts to decide those claims in the first instance, subject to direct review by this Court. But, if Congress disagrees,

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[7] The supplemental-jurisdiction statute is a prime example where Congress has carefully balanced state interests with the practical reasons for allowing federal courts to entertain non-federal claims in particular cases. To avoid piecemeal litigation, Congress has given the federal courts jurisdiction over state-law claims that are "so related to claims within [their] original jurisdiction that they form part of the same case or controversy." 28 U.S.C. § 1367(a). At the same time, however, the statute gives the federal court discretion to "decline to exercise supplemental jurisdiction" over certain claims, including those that "raise[] a novel or complex issue of State law." *Id.* § 1367(c).

it is free to give property owners a second bite at the apple. See *Univ. of Tenn. v. Elliott*, 478 U.S. 788, 799 (1986) (holding that the Full Faith and Credit Clause, U.S. Const. Art. IV, § 1, does not bind federal courts). Congress *could* decide that some benefit of having federal courts check the work of their state counterparts overcomes the detriment to bedrock principles of res judicata and state sovereignty. But Congress has yet to make such a finding, and this Court rightly has refused to intercede. See *San Remo*, 545 U.S. at 338 ("Federal courts * * * are not free to disregard 28 U.S.C. § 1738 simply to guarantee that all takings plaintiffs can have their day in federal court.").

B. Claims alleging takings by local governments are best suited for resolution by state courts.

This Court should adhere to *Williamson County* for the further reason that it honors "the notion of 'comity,' that is, a proper respect for state functions, * * * and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Younger v. Harris*, 401 U.S. 37, 44 (1971). A rule that channels most inverse-condemnation actions to state court also is justified by "the special nature" of those actions, which are "intimately involved with [a State's] sovereign prerogative." *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 28–29 (1959). That is particularly true where (as here) an alleged "taking" stems from "regulation of land use," which "is perhaps the quintessential state activity." *Mississippi*, 456 U.S. at 767 n.30.

It is "a foundational principle of our federal system" that "[s]tate courts are adequate forums for the vindication of federal rights." *Burt v. Titlow*, 571 U.S. 12, 19 (2013). Consistent with that principle, Pennsylvania and

other States have vested their own courts with the responsibility for deciding claims that seek the compensation required by the Fourteenth Amendment. Petitioner proffers no legal or empirical basis to "distrust the capacity of state courts to render correct decisions" on those claims. *Allen*, 449 U.S. at 105. State judges are "bound" to apply federal law when deciding claims under the Just Compensation Clause. U.S. Const. Art. VI, cl. 2. And, there are strong reasons to *trust* state courts to "resolv[e] the complex factual, technical, and legal questions" that arise in such cases. *San Remo*, 545 U.S. at 347.

This case is illustrative. Faced with the threshold question whether petitioner's property was "taken," respondents would argue that neither enactment nor application of the Township's cemetery ordinance effected a taking of her property because "background principles of nuisance and property law" already required her to grant the public reasonable access to the cemetery thereon. *Lucas v. S. Car. Coastal Council*, 505 U.S. 1003, 1031 (1992). See *Beatty*, 27 U.S. at 584 (characterizing interference with a burial right as a "public nuisance"). If petitioner had no right to exclude cemetery visitors to begin with, then the ordinance did not cause even an "injury in fact." *Lucas*, 505 U.S. at 1012 n.3.

If the state court were to disagree with respondents on that point, it would undertake "a complex balancing process," *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 n.12 (1982), to decide whether the ordinance curtailed petitioner's right to exclude others to a sufficient degree to constitute a "taking."[8] That process

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[8] The "traditional doctrine[]" of cemetery visitation, which "already opened [petitioner's] property" to others, differentiates this case from one in which the government acquires "a classic right-of-

would be familiar to the Court of Common Pleas because the federal Just Compensation Clause "is interpreted using the same standards and framework" that govern its counterpart in the state constitution. *Pa. Workers' Comp. Judges Prof'l Ass'n*, 39 A.3d at 496.

For present purposes, the outcome of that process is less germane than its subject: state law. State law is the "foundation[]" of the "property interests" protected by the Fifth and Fourteenth Amendments, *Murr v. Wisconsin*, 137 S. Ct. 1933, 1944 (2017), and "state courts are the ultimate expositors of state law." *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975). A court addressing petitioner's claim would need to exposit at least the common-law right of cemetery visitation, the Township's cemetery ordinance, and the recent state statute governing cemetery access, the last of which almost certainly places an expiration date on any "taking" by the Township. See *supra*, pages 11–13.

That is all before the reviewing court could find itself appraising petitioner's farmland to ascertain just compensation. To aid in that endeavor, the Court of Common Pleas would have at its disposal "a competent and efficient

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way easement." *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 832 n.1 (1987). Nor has petitioner "los[t] all rights to regulate the time in which the public enter[s] onto" her land to visit the cemetery. *Dolan v. City of Tigard*, 512 U.S. 374, 394 (1994). Contra Pet. Br. 47. "[T]he clause last in order" in the pertinent section of the ordinance "prevails," 1 Pa. C.S. § 1934, and that clause preserves the common-law right to impose "[]reasonable restrict[ions]" on cemetery visitors. J.A. 22. See also 1 Pa. C.S. § 1922(1) (state law must be interpreted to avoid "unreasonable" results); *Board of Supervisors v. Ford*, 283 A.2d 731, 735 (Pa. Commw. Ct. 1971) (applying state canons of construction to local ordinances). Given that petitioner has not alleged that *anyone* has tried to visit the cemetery on her property in the wake of the ordinance, it is quite possible that any "pecuniary loss" would be "zero." *Brown v. Legal Found.*, 538 U.S. 216, 240 (2003).

piece of machinery" in the form of the County Board of Viewers, whose local "knowledge and experience" in land valuation would be of substantial benefit. *In re Reber*, 84 A. 587, 589–90 (Pa. 1912). The advantages of that time-honored Pennsylvania institution would be lost in a federal forum. See *Feree v. Meily*, 3 Yates 153, 154 (Pa. 1801) (addressing "an act of 1700" under which "the court appointed six persons to view and adjudge the value of * * * lands of the petitioner as had been taken up for [public] use"). For at least those reasons, a state court "is better equipped" than a federal one to adjudicate any claim for just compensation that petitioner could file. Pet. App. A32.

In the final analysis, the Constitution's "fundamental interest in federalism" justifies affording state courts the opportunity to hear inverse-condemnation claims against local governments in the ordinary course. *Danforth v. Minnesota*, 552 U.S. 264, 280 (2008). See generally *Printz v. United States*, 521 U.S. 898, 931 n.15 (1997) (noting that, except where the Eleventh Amendment is concerned, "the Constitution's guarantees of federalism" extend to local governments to the same degree as their parent States). That strong federalism interest outweighs any "general, undefined federal interest in uniformity" of takings jurisprudence. *Danforth*, 552 U.S. at 280.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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APPENDIX

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1. U.S. Const. Amend. V provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. U.S. Const. Amend. XIV, § 1, provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. 42 U.S.C. § 1983 provides:

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person

within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

4. 26 Pa. Cons. Stat. Ann. § 102 provides, in relevant part:

Application of title.

(a) General rule.--This title provides a complete and exclusive procedure and law to govern all condemnations of property for public purposes and the assessment of damages.

5. 26 Pa. Cons. Stat. Ann. § 302 provides, in relevant part:

Declaration of taking

(a) Condemnation and passage of title.--

(1) Condemnation under the power of condemnation given by law to a condemnor shall be effected only by the filing in court of a declaration of taking with the security required under section 303(a) (relating to security required).

(2) The title which the condemnor acquires in the property condemned shall pass to the condemnor on the date of the filing, and the condemnor shall

be entitled to possession under section 307 (relating to possession, right of entry and payment of compensation).

(b) Contents.--The declaration of taking shall be in writing and executed by the condemnor and shall be captioned as a proceeding in rem and contain the following:

(1) The name and address of the condemnor.

(2) A specific reference to the statute and section under which the condemnation is authorized.

(3) A specific reference to the action, whether by ordinance, resolution or otherwise, by which the declaration of taking was authorized, including the date when the action was taken and the place where the record may be examined.

(4) A brief description of the purpose of the condemnation.

(5) A description of the property condemned, sufficient for identification, specifying the municipal corporation and the county or counties where the property taken is located, a reference to the place of recording in the office of the recorder of deeds of plans showing the property condemned or a statement that plans showing the property condemned are on the same day being lodged for record or filed in the office of the recorder of deeds in the county in accordance with section 304 (relating to recording notice of condemnation).

(6) A statement of the nature of the title acquired, if any.

(7) A statement specifying where a plan showing the condemned property may be inspected in the county in which the property taken is located.

(8) A statement of how just compensation has been made or secured.

6. 26 Pa. Cons. Stat. § 502 provides:

Petition for appointment of viewers

(a) Contents of petition.—A condemnor, condemnee or displaced person may file a petition requesting the appointment of viewers, setting forth:

(1) A caption designating the condemnee or displaced person as the plaintiff and the condemnor as the defendant.

(2) The date of the filing of the declaration of taking and whether any preliminary objections have been filed and remain undisposed of.

(3) In the case of a petition of a condemnee or displaced person, the name of the condemnor.

(4) The names and addresses of all condemnees, displaced persons and mortgagees known to the petitioner to have an interest in the property acquired and the nature of their interest.

(5) A brief description of the property acquired.

(6) A request for the appointment of viewers to ascertain just compensation.

(b) Property included in condemnor's petition.—The condemnor may include in its petition any or all of the property included in the declaration of taking.

(c) Condemnation where no declaration of taking has been filed.—

(1) An owner of a property interest who asserts that the owner's property interest has been condemned without the filing of a declaration of taking may file a petition for the appointment of viewers

substantially in the form provided for in subsection (a) setting forth the factual basis of the petition.

(2) The court shall determine whether a condemnation has occurred, and, if the court determines that a condemnation has occurred, the court shall determine the condemnation date and the extent and nature of any property interest condemned.

(3) The court shall enter an order specifying any property interest which has been condemned and the date of the condemnation.

(4) A copy of the order and any modification shall be filed by the condemnor in the office of the recorder of deeds of the county in which the property is located and shall be indexed in the deed indices showing the condemnee as grantor and the condemnor as grantee.

(d) Separate proceedings.—The court, in furtherance of convenience or to avoid prejudice, may, on its own motion or on motion of any party, order separate viewers' proceedings or trial when more than one property has been included in the petition.

7. 9 Pa. Cons. Stat. § 702 provides:

Declaration of policy

The General Assembly finds and declares as follows:

(1) An individual has a right to reasonable access for visitation to a burial plot in a cemetery that is owned by a cemetery company or person other than a cemetery company or is a private cemetery or private family cemetery.

(2) The Commonwealth has a significant interest in protecting that right.

8. 9 Pa. Cons. Stat. § 703 provides:

Reasonable access for visitation

(a) Cemetery companies.—A cemetery company shall grant an individual reasonable ingress and egress to a burial plot in a cemetery owned by a cemetery company for the purpose of visiting the burial plot.

(b) Cemeteries not owned by cemetery companies.—The owner of a cemetery not owned by a cemetery company shall grant an individual reasonable ingress and egress to a burial plot in the cemetery for the purpose of visiting the burial plot.

(c) Private cemeteries and private family cemeteries.—The owner of property where a private cemetery or private family cemetery is located shall grant an individual reasonable ingress and egress to a burial plot in the private cemetery or the private family cemetery for the purpose of visiting the burial plot.

(d) Residential buildings.—For cemeteries, private cemeteries or private family cemeteries where a residential building is located on the real property, the owner of the real property may determine that reasonable access includes prearranged times for visitation and the methods of ingress and egress to the burial plot.

(e) Access standards.—The cemetery company or the owner of real property where a cemetery, private cemetery, private family cemetery or burial plot is located may designate the frequency, hours and duration of visitation and the route of ingress and egress.

(f) Immunity.—The cemetery company or the owner of real property where a cemetery, private cemetery, private family cemetery or burial plot is located shall, in the

absence of gross negligence or willful misconduct, be immune from liability in a civil suit, claim or cause of action arising out of access granted under this section.

(g) Petition.—An individual denied reasonable access under this section may petition the court of common pleas having jurisdiction where the cemetery, private cemetery, private family cemetery or burial plot is located for relief.